



CLEAN WATER PARTNERSHIP – CANNON

3608 N. Prince Street, Ste. 202
Clovis, New Mexico 88101
(575) 359-7233

Via e-FOIA Transmittal and U.S. Mail

17 November 2020

Clovis, New Mexico

Food and Drug Administration
Division of Freedom of Information
Office of the Executive Secretariat, OC
5630 Fishers Lane, Room 1035
Rockville, MD 20857

RE: FOIA Request concerning PFAS Research at FDA

To Whom it May Concern:

This is a request under the Freedom of Information Act, 5 U.S.C. § 552. On behalf of the Clean Water Partnership - Cannon (CWP-Cannon), I request that copies of the following documents be produced to CWP-Cannon within twenty (20) business days:

1. Any and all information related to the investigation, development or production of a standard or the scientific determination of a standard for PFOA and/or PFOS in any food or beverage including raw agricultural commodities, including but not limited to the following:
 - a. Drinking Water
 - b. Corn
 - c. Sorghum
 - d. Wheat
 - e. Soybeans
 - f. Dairy Milk
 - g. Other milk products
 - h. Beef
 - i. Pork
 - j. Eggs and Poultry
 - k. Lamb

This list is not designed to be exhaustive, but rather suggestive of raw agricultural commodities for which a scientific standard may have been investigated or developed.

2. Any and all communications with the U.S. Department of Agriculture, the U.S. Food & Drug Administration, the U.S. Department of Defense (or any Service branch thereof) or another

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federal agency concerning the establishment of a scientifically determined standard for PFOA and/or PFOS in drinking water, agricultural water or any raw agricultural commodity.

As used in this FOIA request, the term PFOA refers to perfluorooctanoic acid or polyfluorooctanic acid and the term PFOS refers to perfluorooctanesulfonic acid or polyfluorooctanesulfonic acid and each term refers to the entire family of manufactured perfluorochemicals (PFCs) and byproducts thereof used to make fluoropolymer coatings, AFFF (Aqueous Film-Forming Foam) products used in fire-fighting activities and other products that resist heat, oil, stains, grease, and water.

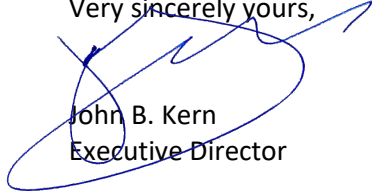
On December 10, 2019, the President signed the 2020 National Defense Authorization Act incorporating Sec. 343 compelling the Department of Defense to purify not only drinking water but agricultural water. On August 4, 2020, the DoD responded (see attached letter from the DoD Assistant Secretary for Sustainment) with a policy statement that it would only treat agricultural water used in raw agricultural commodities and milk where the relevant agency had published a scientifically determined standard for PFOA and/or PFOS in the relevant commodity, as the EPA has done in regard to drinking water. The DoD did not explain the significance of the EPA's methodology or reporting as to the drinking water standard announced in 2016; this request is to establish precisely what criteria were followed in the EPA's investigation, and development of a rule pertaining to drinking water; as well as for any other products evaluated by the EPA for PFOA or PFOS.

Please note that CWP-Cannon is a non-profit organization requesting this information in order to benefit the public interest by increasing understanding of the government's operations and activities pursuant to 5 U.S.C. § 552(a)(4)(A)(iii). Accordingly, CWP-Cannon is entitled to a waiver of all costs associated with responding to this request.

If you have any questions regarding this request, I may be contacted at (505) 316-4066.

Thank you.

Very sincerely yours,



John B. Kern
Executive Director

Cc: Dr. Emilio Esteban
Chief Scientist, FSIS
emilio.esteban@fsis.usda.gov

Enclosure as noted.

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SUSTAINMENT

ASSISTANT SECRETARY OF DEFENSE

3500 DEFENSE PENTAGON
WASHINGTON, DC 20301-3500

4 August 2020

MEMORANDUM FOR ASSISTANT SECRETARY OF THE ARMY (INSTALLATIONS,
ENERGY AND ENVIRONMENT)
ASSISTANT SECRETARY OF THE NAVY (ENERGY,
INSTALLATIONS AND ENVIRONMENT)
ASSISTANT SECRETARY OF THE AIR FORCE
(INSTALLATIONS, ENVIRONMENT AND ENERGY)
DIRECTOR, DEFENSE LOGISTICS AGENCY (INSTALLATION
MANAGEMENT)

SUBJECT: Guidance for Implementing Section 343 of the National Defense Authorization Act
for Fiscal Year 2020, Provision of Water Uncontaminated with Perfluorooctanoic
Acid and Perfluorooctane Sulfonate for Agricultural Purposes

The Department has reviewed section 343 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2020 providing the Department of Defense (DoD) the authority to address water sources impacted by DoD releases of perfluorooctane sulfonate (PFOS) and perfluorooctanoic acid (PFOA). This memorandum provides clarifying guidance regarding implementation of this provision.

Section 343 of the FY 2020 NDAA provides the DoD Components discretionary authority to use Operation and Maintenance funds to provide alternative water or treat DoD impacted surface water or well(s) used for agricultural purposes to create products destined for human consumption. This authority may only be used if PFOS and/or PFOA is in agricultural water above the 2016 Environmental Protection Agency (EPA) Safe Drinking Water Act lifetime Health Advisory levels for PFOS and/or PFOA of 70 parts per trillion, or the PFOS/PFOA levels in the raw agricultural commodities¹ and milk exceeds an applicable Food and Drug Administration (FDA) standard.²

Consistent with DoD's risk-based cleanup program, DoD may exercise this authority to provide alternative water or treat agricultural water based on meeting two criteria. The first criterion is a scientifically supportable determination of a need to take action due to an unacceptable risk to human health or the environment based on the site-specific exposure. Such a determination can be made in one of two ways.

- First, the DoD may assess the health risks from human consumption of food produced using water impacted by PFOS/PFOA, as well as risks to ecological receptors from consuming water impacted by PFOS/PFOA under the federal

¹ "The term 'raw agricultural commodity' means any food in its raw or natural state, including all fruits that are washed, colored, or otherwise treated in their unpeeled natural form prior to marketing." Title 21, United States Code, section 321(r).

² The FDA has not established such a standard at this time. The Department will update this memorandum if the FDA establishes a standard for PFOS and PFOA in raw agricultural commodities and milk.

cleanup law, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA). The need for a site-specific CERCLA cleanup action would be based on a determination that the release of PFOS/PFOA from DoD activities results in an unacceptable risk to human health or the environment following EPA's regulations and risk assessment policies. Alternatively, if the FDA establishes standards for PFOS and/or PFOA in raw agricultural commodities and milk, DoD can use these scientifically supportable standards in its cleanup process.

- The second criterion is a determination that the PFOS and/or PFOA concentrations, above the EPA or FDA levels, are from DoD activities ("contaminated with such compounds by reason of activities on a military installation"). Both these criteria must be met to determine a need to provide alternative water or treat agricultural water, and should be interpreted consistent with CERCLA and Defense Environmental Restoration Program authorities.

If a DoD Component plans to take action to address agricultural water based on the authority in section 343 of the FY 2020 NDAA, the DoD Component Deputy Assistant Secretary for Environment will forward an explanation in writing stating how the site meets the criteria in this memorandum along with supporting documentation to the Office of the Deputy Assistant Secretary of Defense for Environment (ODASD(Env)) for approval. ODASD(Env) will seek review by the DoD Office of General Counsel for Environment, Energy and Installations before providing a response to the requesting DoD Component.

My point of contact for this matter is Ms. Deborah Morefield, at 703-571-9067 or deborah.a.morefield.civ@mail.mil.



W. Jordan Gillis

cc:
Chief, National Guard Bureau